Supreme Court, U.S.
FILED
AUG 15 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85 - 61

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

WALLACE McFARLAND, PETITIONER,

v.

McGUINN, HILLSMAN & PALEFSKY, et al.
RESPONDENTS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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August 8, 1985

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STATEMENT OF THE CASE

Respondent Bethlehem Steel Corporation requests that Wallace McFarland's Petition for Writ of Certiorari be denied.

A brief history of the matters leading to the Petition for Writ of Certiorari is instructive and is absent from that petition.

In 1970, petitioner Wallace McFarland filed a claim with the United States Department of Labor seeking benefits under the Longshore and Harbor Workers' Compensation Act, 33 USC 901, et seq. He alleged an accident in the course of employment at Bethlehem Steel Corporation occurring March 21, 1970. After trial before an Administrative Law Judge, a Decision and Order was rendered finding that the alleged accident did not occur. Petitioner appealed to the Benefits Review Board and then to the Ninth Circuit Court

of Appeals without success at either tribunal. He then petitioned to reopen his claim alleging a change in condition and mistake in determination of fact pursuant to Section 22 of the Longshore and Harbor Workers' Compensation Act, 33 USC 922. That petition was denied and is currently on appeal to the Benefits Review Board.

Separately, Wallace McFarland filed four complaints with the United States District Court for the Northern District of California. In each he generally alleged fraud, misrepresentation, breach of contract, racial discrimination, and violations of various civil rights. Each complaint was premised upon Wallace McFarland's allegations that he was denied workers' compensation benefits due to the tortious acts of the various defendants. Each of these allegations had been made and considered in appeals and reconsiderations of the compensation claim. The defen-

dants' position was that Plaintiff had failed to state a claim for which relief could be granted. It was res judicata that no accident had occurred. Without the alleged accident there were no damages.

Wallace McFarland's first two civil complaints, C-82-5187SC and C-82-5188SC were dismissed by Plaintiff. His fourth civil complaint was never served. The third civil complaint, C-84-0499WHO, subject of this proceeding, was dismissed by Judge Orrick May 22, 1984. Concurrent with ordering the dismissal of that complaint, Judge Orrick ordered the Clerk of the Court not to file further complaints by Mr. McFarland unless such complaints shall first have been reviewed by a Judge of that Court.

Petitioner's appeal from the Order of Judge Orrick is dismissed as untimely. Petitioner now asks this Court to find timely that which on its face is untimely.

SUMMARY OF ARGUMENT

1. The District Court did not deviate from usual and accepted procedures but followed its published rules.

2. Petitioner's alleged confusion and failure to obtain legal counsel are insufficient grounds for allowing an untimely appeal.

3. The orders of the District Court are clear and unambiguous and were filed and entered more than 60 days prior to Petitioner's appeal.

ARGUMENT

Petitioner has raised no Constitutional question which would warrant this Court's review.

Petitioner has cited no conflict in lower court opinions which would require resolution by this Court.

Petitioner has raised no special, important, or novel questions of law which would justify the attention of this Court.

Petitioner argues that the District Court deviated from their usual and accepted judicial procedures in denying Plaintiff opportunity for oral argument and that such deviation was sanctioned by the Ninth Circuit Court of Appeals. However, Local Rule 220-1, as cited by Petitioner specifically allows the very procedure which Petitioner now characterizes as a deviation. Respondent Bethlehem Steel Corporation maintains that procedures

followed in this case are within the range of usual and acceptable and are not in need of review by this Court.

Petitioner argues that confusion and inability to obtain legal counsel should serve as grounds for excusing his failure to appeal timely. Respondent Bethlehem Steel Corporation submits that petitioner's confusion or failure to obtain legal representation are insufficient grounds for breaching a statutorily imposed time limitation. This is especially so where Mr. McFarland has previously appealed to the Ninth Circuit Court of Appeals in propria persona, McFarland v. United States Department of Labor, et al., No. 78-2283 (9th Cir. Sept. 19, 1980), has previously retained numerous attorneys to represent him over the years on a piecemeal basis in this 15 year stream of litigation, including two of the Defendants herein, Lewis Phon, and John

Hillsman, and where the San Francisco Telephone Directory lists 72 pages of attorneys, including separate sections for attorney referral services and for attorneys specializing in appellate practice.

Petitioner relies heavily on the fact that Judge Orrick issued two orders, one dismissing the complaint and the other directing activity of the Clerk of the Court. Petitioner asks that these two orders be read as one. Respondent maintains that they are two distinct orders, are not to be read as one, and the issuance of the procedural order to the clerk does not extend the time for appeal. Petitioner misinterprets Judge Orrick's procedural order. It is not intended to prevent plaintiff from amending his complaint since his right to amend the complaint was terminated with the Order Dismissing With Prejudice. Further-

more, the Order to the Clerk would have no effect upon Mr. McFarland filing suit in any other court and, indeed, it would not prevent him for filing further suit in the U.S. District Court for the Northern District of California. It would merely insure that any further suits filed in that Court would have to state a claim for which relief could be granted.

Because the procedural Order of Judge Orrick was directed at the Clerk of the Court rather than at the parties to the litigation, because that Order did not have the effect argued by Petitioner, because the order dismissing the complaint is self-sufficient and clear on its face and constitutes a final and appealable order, orders of the Ninth Circuit Court of Appeals dismissing appeal and denying reconsideration are proper and should not be set aside.

Petitioner should be chastised rather than rewarded for attempts to confuse rather than clarify this matter. He alleges both that Judge Orrick's procedural order was not entered and that it was entered two months before it was issued. Review of the documents themselves reveal that both the Order Dismissing with Prejudice and the procedural order were filed on May 22, 1984, at 4:02 p.m. See Petitioner's exhibits E1, and F. Review of the Civil Docket Continuation Sheet, Petitioner's exhibit D5 (D8 in amended petition) makes it clear that both orders were entered May 23, 1984, and that reference to entry of the procedural order in March is merely a typographical error.

CONCLUSION

For these reasons, the Petition For Writ of Certiorari should be denied.

Date:

Respectfully submitted

PARRISH & MORIARTY

BILL PARRISH
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BETHLEHEM STEEL
CORPORATION